

FINDING OF EMERGENCY

The department finds that the adoption of Section 25.15 through 25.22 in Title 13, Division 1, Chapter 1, Article 2.1, California Code of Regulations, is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Background

The Employer Testing Program (ETP) is a voluntary federal and state regulated program that allows States to utilize a third-party tester to conduct the drive test (pre-trip, skills, and road testing) portion of the commercial driver license test for Class A, Class B, and the non-commercial Class A and B firefighter restricted licenses. The department defines third-party testers as “Employers,” requiring an employer-employee relationship between the company and the drivers that they intend to certify at the time of training, testing, and certification.

During the federal audit exit conference, federal auditors expressed concern regarding third-party Examiner inactivity. Their concern was that some of California’s third-party Examiners were not maintaining driver evaluation skills sufficient for determining a driver’s proficiency to operate a commercial class A or B vehicle. These Examiners were found to conduct few or no drive tests on an annual basis. Current Employer Testing Program regulations do not establish a minimum number of tests for each third-party Examiner to conduct in order for the Examiner to stay proficient.

FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

The department finds that the emergency adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety or general welfare pursuant to Government Code section 11346.1(b).

- Examiners in the Employer Testing Program are not maintaining adequate knowledge and skill required to conduct a commercial drive test.
- Currently only 34% (1,700) of the approximately 5,000 people trained examiners eligible to conduct drive tests in the Employer Testing Program conduct driving tests on an annual basis.
- Sixty-three percent of the Examiners perform two (2) or fewer commercial drive tests per year.
- Current regulations do not require Examiners to perform a minimum number of drive tests or mandatory refresher training to maintain the knowledge and skill to conduct a commercial class A or B driving test.
- Inactive Examiners are eligible to conduct driving tests regardless of the length of their inactive status.
- California and the nation’s citizens are put in danger from unqualified drivers who are licensed based on substandard driving tests conducted by inadequate third party Examiners.
- The department needs to adopt an emergency regulation to require the retraining of Examiners who do not conduct the minimum number of driving tests to ensure that their driving test evaluation skills are current. In addition, the regulation revision

allows for the disqualification of Examiners who fail to conduct at least 1 driving test in any consecutive 90-day period.

- The fee currently being charged for examiner training classes is not adequate to cover the department's costs.

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The department has found that inadequate third-party Examiners are conducting drive tests for thousands of commercial Class A and B drivers annually, which may result in substandard drivers being issued a Certificate of Driving Skills for a waiver of a DMV administered driving test. California must rectify this problem by establishing additional Examiner driver testing and training requirements.

The fee of \$55 currently being charged per examiner for training is not adequate to cover the department's costs. Vehicle Code Section 15250(c)(2)(H) authorizes the department to charge a fee which is sufficient to defray the actual costs incurred by the department for administering and evaluating the third-party testing program, and for carrying out any other activities deemed necessary to ensure sufficient training for the drivers participating in the program. A costing was done which indicated that it costs the department \$169.84 to conduct two-day examiner training classes. The department proposes to raise the fee from \$55 to \$150 per examiner for the training class.

The fee being charged for the training is deposited into the Motor Vehicle Account (MVA). The majority of the MVA revenue supports the activities of the California Highway patrol, the Department of Motor Vehicles, and the Air Resources Board. The monies in this account are necessary to provide safety of our public roadways, protect public buildings and infrastructure, provide identity information to law enforcement and ensure the competency of California drivers. In order to maintain this level of service, regular deposits of funds must replenish the MVA. These services are related to the public peace, health and safety, and general welfare of the citizens of California.

AUTHORITY AND REFERENCE

The department proposes the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Vehicle Code sections 12804.9 and 15250.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulation will provide the department with a mechanism for ensuring that all examiners who conduct driving tests in the Employer Testing Program maintain the evaluation skills necessary for adequately assessing the driving ability of the drivers taking the drive test.

The department proposes to amend sections 25.15 through 25.22, Title 13, Division 1, Chapter 1, Article 2.1, California Code of Regulations to establish testing minimums for third party examiners and increase the examiner training class fee.

FISCAL IMPACT STATEMENT

- Cost or Savings to any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Cost or Savings in Federal Funding to the State: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- The failure to adopt the proposed regulatory action will sustain inadequate testing practices within the Employer Testing Program.
- The adoption of this regulation will not create or eliminate jobs or businesses in the State of California, nor will it result in the elimination of existing businesses, or reduce or expand businesses currently doing business in the State of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action may affect small businesses and entities with little or no certification activity on a yearly basis. Examiners working exclusively for these entities would be required to attend refresher training in order to resume their ability to conduct driver testing. Examiner refresher courses may be held in geographic locations that would require travel expenses that may include overnight hotel stays, airfare and rental car and other expenses.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Bonnie DeWatney, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820, telephone number (916) 657-8954, or bdewatney@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Chief of Staff, Deborah Baity at (916) 657-5690 or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.